

MELINDA HAAG (CABN 132612)  
United States Attorney

MIRANDA KANE (CABN 150630)  
Chief, Criminal Division

KYLE F. WALDINGER (ILBN 6238304)  
Assistant United States Attorney

450 Golden Gate Avenue, 11<sup>th</sup> Floor  
San Francisco, California 94102  
Telephone: (415) 436-6830  
Facsimile: (415) 436-7234  
E-mail: kyle.waldinger@usdoj.gov

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	No. CR 07-0568 MHP
	)	
Plaintiff,	)	
	)	
v.	)	JOINT MOTION AND REQUEST TO
	)	CONVERT SENTENCING HEARING TO
MARK JACOBSON,	)	STATUS HEARING AND <u>[PROPOSED]</u>
	)	ORDER
Defendant.	)	
	)	

Pursuant to Criminal Local Rule 32-2, the United States and the defendant Mark Jacobson jointly request that the sentencing hearing presently set for May 23, 2011, be converted to a status hearing.

The defendant Mark Jacobson previously pled guilty pursuant to a plea agreement in which he agreed to cooperate with the United States in its investigation and prosecution of other individuals. It is now anticipated that Mr. Jacobson will testify at the trial of the defendant David Nosal in United States v. David Nosal, CR 08-0237 MHP. The Nosal case is currently on appeal before the Ninth Circuit. Regardless of the Ninth Circuit's disposition of the United States' appeal in the Nosal matter, at least some charges alleged in the Nosal Indictment will proceed to trial, and Mr. Jacobson will testify at that trial.

JOINT MTN. & [PROPOSED] ORDER  
CR 07-0568 MHP

1 Because Mr. Jacobson's cooperation with the government's investigation and prosecution  
2 of other individuals is not yet complete, the parties jointly request that the Court convert the  
3 scheduled sentencing date of May 23, 2011, to a status hearing. The specific bases of the parties'  
4 request are set out in more detail below.

5  
6 **I. Delaying Sentencing In This Matter Will Benefit The United States And Will  
Potentially Benefit The Defendant.**

7 A defendant who requests a continuance of his sentencing hearing should be able to  
8 demonstrate that the government either desires or can benefit from his cooperation. *Cf. United*  
9 *States v. Urban-Potratz*, 470 F.3d 740, 744 (8<sup>th</sup> Cir. 2006) (affirming denial of defendant's  
10 motion for continuance where defendant's additional cooperation would have required DEA to  
11 arrange an operation and approve defendant's participation in it and DEA "had already denied  
12 one such request").

13 In the present matter, Mr. Jacobson is cooperating with the government, and has been  
14 doing so since 2007. In the past, Mr. Jacobson has participated in meetings with government  
15 investigators regarding the facts and circumstances of the conspiracy charged in the Nosal case.  
16 It is anticipated that he will participate in additional meetings once the Nosal matter is set for  
17 trial. Mr. Jacobson's further cooperation in this case does not require special arrangements, but  
18 rather only the defendant's testimony in the trial of his co-conspirator Nosal.

19 In addition, Mr. Jacobson's active cooperation, through testimony against his  
20 co-conspirator Nosal, may significantly alter the United States' recommendation (if any) as to an  
21 appropriate sentencing reduction by enhancing the value of the defendant's cooperation "in the  
22 investigation or prosecution of another person who has committed an offense." United States  
23 Sentencing Commission, Guidelines Manual § 5K1.1, p.s., comment. (n.3).

24 Finally, because Mr. Jacobson will be required to testify at trial, his cooperation with the  
25 government's investigation is not yet complete. Pursuant to the terms of his plea agreement, Mr.  
26 Jacobson has agreed to request continuances of his sentencing date until his cooperation is  
27 completed. *See* Plea Agrm., ¶ 9.e. Indeed, the parties' agreement anticipated that sentencing in  
28 this case would not proceed until Mr. Jacobson's cooperation was complete.

**II. Neither The Defendant Nor the Government Will Suffer Inconvenience.**

Neither the government nor the defendant will suffer inconvenience by converting the sentencing hearing to a status hearing. While the parties acknowledge that inconvenience to the Court or witnesses may be an important factor in a consideration of whether to continue a trial, it is less important in the case of a short hearing where no witnesses are called and where re-calendarings may be accomplished easily. *United States v. Flynt*, 756 F.2d 1352, 1360 (9<sup>th</sup> Cir. 1985) (contempt hearing); *see also United States v. Rivera-Guerrero*, 426 F.3d 1130, 1141 (9<sup>th</sup> Cir. 2005) (hearing regarding anti-psychotic drug administration).

In fact, courts routinely grant requests to continue sentencing hearings for the purpose of cooperation. *See United States v. Ressam*, 629 F.3d 793, 811 & n.2 (9<sup>th</sup> Cir. 2010) (referencing multiple sentencing continuances to allow for cooperation with the government, including a nine-month continuance “to allow Ressam ‘the opportunity to fulfill the terms of his promised cooperation’”); *United States v. Myers*, 993 F.2d 713, 714 (9<sup>th</sup> Cir. 1993) (referencing “many” continuances of defendants’ sentencing hearing for purpose of substantial assistance).

In this case, a sentencing continuance should not present substantial inconvenience to the Court or to third parties and will not inconvenience the government or the defendant, and its timing can easily be assessed based on the progression of the government’s case against David Nosal. Converting the sentencing hearing to a status hearing will also provide the Probation Office with additional time to complete the presentence report in this (and related) cases, and will allow the parties to maintain their focus on Mr. Jacobson’s continuing cooperation.

**III. Conclusion.**

For all of these reasons, the parties jointly request that this Court convert the sentencing

///

///

///

///

///

///

1 hearing presently set for May 23, 2011, to a status hearing.

2  
3 Respectfully submitted,

4 Dated: April 27, 2011

MELINDA HAAG  
United States Attorney

5  
6  
7 /s/  
KYLE F. WALDINGER  
Assistant United States Attorney

8  
9  
10 Dated: April 27, 2011

/s/  
THOMAS CARLUCCI  
JAIME B. GUERRERO  
Attorneys for defendant Mark Jacobson

11  
12  
13  
14 ~~[PROPOSED]~~ ORDER

15 GOOD CAUSE APPEARING,

16 IT IS ORDERED that the sentencing hearing presently set for May 23, 2011, be  
17 converted to a status hearing.

18 Dated this 28th day April, 2011

